IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C.Nos.1853/05, 1854/05, 1857/05, 1862/05, 1863/05, 1864/05, 1865/05, 1866/05, 1867/05, 1868/05, 1869/05, 1905/05, 1906/05, 2568/05, 2597/05, 2598/05 & 2603/05.

Harmeet Singh Paintal ... Petitioner
! through: Mr.K.K.Manan, Advocate with Mr.Rishikesh Choudhary and Mr.Asit Tewari, Advocates.

VERSUS

$ State (NCT of Delhi) & Ors. ... Respondents
^ through: Mr.Sanat Kumar and Mr.M.P.Singh, Advocates.

% **D**ATE OF DECISION: 24-10-2007

CORAM:
* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (ORAL)

1. All petitions can be disposed by a common order for the reason learned counsel for the parties agree that save and except the cheque number, date of cheque and the amount, each and every averment in the complaints which are sought to be quashed in the instant petitions are identical.

2. Since matter was argued with reference to

Crl.M.C.No.2953/05, complaint forming subject matter of the said petition may be noted.

3. But before that it may be recorded that all the complaints are under Section 138 read with Section 141 of N.I.Act. The complainant is National Small Industries Corporation Ltd. Accused No.1 is M/s Jay Rapid Rollers Ltd. It is a company registered under the Companies Act. Accused No.2, Sukhbir Singh is stated to be the Managing Director of accused No.1. Accused No.3 is the petitioner, stated to be the Director of accused No.1.

4. The complaint is short and cryptic. It may be reproduced verbatim.

> "1. That the complainant firm is a Govt. of India Enterprises having its office at NSIC Bhawan, Okhla Industrial Estate, New Delhi and Sh.Satender Kumar, Development Officer (Law) has been authorized to file the complaint vide power of attorney dated 03.09.2002.
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> 2. That the accused persons approached the complainant for financing of bill integrated market support programme. The complainant extended the bill financing facility to the accused.
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> 3. That the accused issued cheques and same were dishonoured and the complainant company filed cases against the accused persons and they were summoned under Section 138 N.I.Act by the Hon'ble Court.

4. That during the proceedings a settlement was arrived at. The accused persons accepted the liability of Rs.75,68,920/- and against that liability accused persons issued cheque No.809235 dated 15.4.2003 for Rs.2 lacs as part payment, drawn on State Bank of India, Pusa Road, Shopping Complex, Rajendra Place, New Delhi. Copy of letter dated 03.06.2000 issued by accused persons enclosed herewith.

5. That the above said cheque was presented by the complainant to their banker Punjab National Bank, Okhla Industrial Estate, New Delhi but the same was returned unpaid with the remarks “INSUFFICIENT FUNDS” vide memo dated 19.4.2003 of the bank of accused.

6. That the complainant issued notice dated 24.4.2003 dispatched on 24.4.2003 under Regd. A.D. and under UPC cover. The Regd. And UPC envelopes addressed to the accused No.2 and 3 has been received back with the remarks 'refused' and the other were duly served upon the accused by UPC as well as by Registry, but the payment has not been received by the complainant company within 15 days. The returned registry envelope (2 nos.) are enclosed herewith.

7. That the accused No.1 is a company duly registered under the Companies Act.

8. That the accused No.1 is the Managing Director and accused No.3 is the Director of the accused company. The accused No.2 and 3 are the in-charge and responsible for the conduct of the business of the company accused No.1 and hence are liable for the offences.

9. That the complainant office is situated in Delhi, the payment was received at Delhi and the cheques were presented to banker in

Delhi, hence this Hon'ble Court has got jurisdiction to decide the matter.

10. That the complaint is within limitation of one month prescribed under the N.I.Act.

11. That the accused have rented themselves liable to be prosecuted under the N.I.Act.

12. That the complainant is a Govt. of India undertaking and the complainant be exempted from pre-summoning evidence.

It is therefore, most respectfully and in the interest of justice prayed that the accused persons be summoned and punished under Section 138/141/142 N.I.Act.

It is further prayed that the amount realized as fine be paid to the complainant."

5. It is conceded by learned counsel for NSIC, the complainant that though in para 4 of the compliant it is stated that the accused persons issued the cheque in question but as a matter of fact the cheque in question was issued only under the signatures of accused No.2.

6. Perusal of the complaint shows that only averment against the petitioner is in para 8 of the complaint wherein it is stated that he along with accused No.1 was in-charge and responsible for the conduct of the business of the company and hence, is liable for the offence committed by accused No.1.

7. Question arises, whether said averment is sufficient to make petitioner liable for the offence committed by the company.

Needless to state, offence is under Section 138 of N.I.Act.

8. I need not expand on the issue save and except note two decisions of the Supreme Court reported as JT 2007 (2) SC 233, *Saroj Kumar Poddar Vs. State (NCT of Delhi & Anr.)* and AIR 2007 SC 1454, *N.K.Wahi Vs. Shekhar Singh & Ors.*

9. In para 14 of the report in *Saroj Kumar Poddar*'s case, Supreme Court has observed as under :-

> "14. Apart from the company and the appellant, as noticed hereinbefore the Managing Director and all other Directors were also made accused. The appellant did not issue any cheque. He, as noticed hereinbefore, had resigned from the Directorship of the company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint petitions as to how and in what manner the appellant was responsible for the conduct of the business of the company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in paragraph 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act."

10. In para 8 of the decision in *N.K.Wahi*'s case, Supreme Court observed as under :-

> "8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as

> to how the Directors are incharge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable."

11. Decision in *N.K.Wahi*'s case delivered by the Supreme Court affirmed the decision of a learned Single Judge of this Court reported as 102 (2003) DLT 297 *Shekhar Singh Vs. N.K.Wahi*. Since it was urged by learned counsel for the respondent that decision of the Supreme Court in *N.K.Wahi*'s case has not specifically noted as to what was the assertion in the complaint which was being considered, I have thought it relevant to refer to the decision of the learned Single Judge of this Court which was upheld by the Supreme Court for the reason, in para 14 of the report, the learned Single Judge has noted the assertions/averments in the complaint. Learned Single Judge has noted that the only averment against N.K.Wahi was that he was a Director of the company and was responsible for the business of the company.

12. I may note that the petitioner claims to have resigned as a Director of accused No.1 on 27.9.1996, but since this issue may need evidence I eschew any discussion thereon.

13. In view of the clear enunciation of law on the subject by the Supreme Court, the petitions are allowed. Summoning orders which are challenged in each petition are also quashed. The complaints are quashed but viz-a-viz the petitioner Harmeet Singh Paintal.

13. No costs.

October 24, 2007 PRADEEP NANDRAJOG, J.
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